



VIA ECFS

December 3, 2014

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
Office of Secretary
445 12th Street, S.W.
Washington, D.C. 20554

RE: Petition for Limited Waiver and Review of a Decision of the Universal Service Administrator, WC Docket No. 06-122, Sancom, Inc., d/b/a Mitchell Telecom.

Dear Ms. Dortch,

On behalf of Sancom, Inc., d/b/a Mitchel Telecom ("Sancom"), Vantage Point Solutions respectfully submits the above-referenced Petition for Limited Waiver. Sancom seeks a limited waiver and request for review of decision of the Universal Service Administrator, WC Docket No. 06-122.

Please direct inquiries regarding this Limited Waiver to the undersigned consultant for the Company.

Sincerely,

A handwritten signature in black ink that reads 'Doug Eidahl'. The signature is written in a cursive, flowing style.

Doug Eidahl
Vice President of Consulting
Vantage Point Solutions
605-995-1750
Doug.Eidahl@Vantagepnt.com

Enclosures

cc: Chief, Wireline Competition Bureau

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the matter of)	
)	
Universal Service Contribution Methodology)	WC Docket No. 06-122
)	
Petition for Declaratory Ruling by the Rural)	
Independent Competitive Alliance)	
)	
Petition for Limited Waiver and Request for)	
Review of Decision of the Universal Service)	
Administrator by Sancom, Inc. d/b/a Mitchell)	
Telecom)	

**PETITION FOR LIMITED WAIVER AND
REVIEW OF A DECISION OF THE UNIVERSAL SERVICE ADMINTRATOR**

Sancom, Inc. d/b/a/ Mitchell Telecom ("Sancom")¹ hereby requests the Commission to issue a limited waiver of a condition in its Declaratory Ruling and Order (RICA Order) in this proceeding released November 25, 2013, DA 132254. Sancom further requests, pursuant to 47 CFR 54.719(c), the review of a decision of the Universal Service Administrator (USAC) denying Sancom the relief established in the RICA Order for RICA members.² The RICA Order granted a Petition for Declaratory Ruling (Petition) filed by the Rural Independent Competitive Alliance (RICA) regarding the identification of interstate revenues of CLECs on their 499-A filings.

The RICA Petition dealt with the validity of the then existing 499-A Instructions, which required CLECs to allocate to the interstate jurisdiction a portion of their fixed local service revenue for federal Universal Service Fund contributions. The RICA Order directed USAC to accept revised FCC Forms 499-A from RICA members who had filed them under protest while

¹ Sancom is a rural competitive local exchange carrier ("CLEC") affiliated with a rural incumbent local exchange carrier ("ILEC") providing services in South Dakota.

² See generally, RICA Declaratory Ruling and Order, 28 FCC Rcd 16037; Petition of the RICA Members for Declaratory Ruling Regarding Imputation of Interstate Revenue, WC Docket No. 06-122 (filed April 26, 2011) (RICA Petition).

disputing USAC's changed instructions. The RICA Order stated that there is no FCC requirement for rural CLECs to report or allocate on FCC Form 499-A any portion of their end user revenues from local service to the interstate jurisdiction. In support of this request Sancom states as follows:

I BACKGROUND

Sancom is a CLEC carrier providing telephone, Internet and cable television services to end users in the Mitchell, South Dakota Exchange. Sancom did not have a federally-tariffed interstate subscriber line charge. Sancom had a flat rate for its local exchange voice service, which also included an intrastate monthly fee called a "network connectivity fee".

In December 2010, USAC sent letters to many CLECs advising them that the 2010 FCC Form 499-A that they filed failed to report an interstate revenue portion of fixed local exchange services. According to USAC "an interstate portion of fixed local exchange revenues must be identified because these revenues correspond to the costs associated with allowing customers to originate and terminate interstate calls."³ Sancom received such a letter. Sancom discussed the letter with USAC and after stating its disagreement with USAC's new position and instructions, under protest Sancom revised its 2011 Form 499-A (reflecting 2010 revenues) identifying a portion of its intrastate local exchange service revenues as interstate in accordance with one of the alternative methodologies suggested by USAC.

In November 2013, the Commission released the RICA Order, based on a petition for declaratory ruling filed by RICA.⁴ The petition referenced whether competitive local exchange carriers ("CLECs") are required to allocate to the interstate jurisdiction a portion of their fixed local service revenue for federal Universal Service Fund (USF) contribution purposes.⁵ In its petition, RICA asked the Commission to clarify that CLECs are not obligated to report on their

³ See generally, RICA Declaratory Ruling and Order, 28 FCC Rcd 16037; Petition of the RICA Members for Declaratory Ruling Regarding Imputation of Interstate Revenue, WC Docket No. 06-122 (filed April 26, 2011) (RICA Petition).

⁴ See *id.* The RICA/Blackfoot Order also addressed a request for review filed by Blackfoot Communications, Inc. (BCI) of a decision by USAC to reclassify as interstate revenue a portion of the fixed local service revenues reported by BCI on its 2010 FCC Form 499-A.

⁵ *Id.*

FCC Forms 499-A any portion of their end user revenues that are not received by them pursuant to rates explicitly designated as charges for the provision of interstate services.⁶

The Commission agreed with RICA, clarifying “although CLECs must report their end user interstate revenues on the FCC Forms 499, no Commission rule or order requires CLECs to identify and recover from their end user customers a SLC or equivalent charge for the non-traffic-sensitive costs of providing interstate or interstate exchange access service.”⁷ Rather, the Commission noted that “under existing rules and requirements, CLECs are free to recover those interstate costs from their interexchange carriers in whatever manner they deem appropriate,” within the limitations of the FCC’s rules.⁸

Accordingly, The Commission granted RICA’s request, allowing those “RICA members who filed FCC Forms 499 under protest, based on USAC’s directive to identify an interstate portion of fixed local exchange services, a period of 60 days within which to revise their filings and provide any relevant documentation in support of such filings”.⁹ The FCC also directed USAC to refund any resulting overpayments to these parties based on its review of those revised filings and supporting documentation consistent with the Commission’s findings.¹⁰ Finally, the Commission waived the one-year filing deadline for this group of contributors “to enable USAC’s processing of any such revised filings,”¹¹ but cautioned contributors “that the relief provided in the *Order* does not permit them to modify retroactively how they have recorded revenues in their general ledgers for past periods.”¹²

On January 22, 2014, Sancom submitted the revised 2011 Form 499-A (reflecting 2010 revenues) to USAC within the required 60-day period provided in the RICA Order. USAC later determined that Sancom did not qualify for the relief provided in the RICA Order since Sancom was not a RICA member during calendar year 2010 and did not supply its books of accounts and records to demonstrate its revenue allocation (attached as Exhibit A).

⁶ Id.
⁷ Id.
⁸ Id.
⁹ Id.
¹⁰ Id.
¹¹ Id.
¹² Id.

Sancom is a rural CLEC, but was not a member of RICA at the time of the RICA Order. However, exactly like the RICA members, Sancom filed its prior Form 499s under protest with USAC and timely filed revised 499 forms after the RICA Order within the time period established by the RICA Order.

Sancom operates just like the other RICA CLECs. For a fee, it provides local exchange service to end users allowing subscribers to place and receive calls within the boundaries of the exchange.¹³ Local exchange service provides access to long distance carriers and the ability to place and receive intrastate and interstate interexchange calls. A separate charge is set by the rate schedule of the long distance carrier. If Sancom is the long distance carrier, they report the revenues for interstate interexchange calls on FCC Form 499-A, as well as bill and collect interstate access in accordance with tariffs filed.

Sancom end user rates are not regulated by either this Commission or the state commission and they do not perform jurisdictional allocations according to Part 36 of the Commission's Rules.¹⁴ The local exchange facilities incur costs to provide origination and termination of interexchange calls; however, they do not intend to recover any of these costs other than by means of switched access charges. Their local exchange charges are intended to recover all the costs of providing local service except those costs recovered through switched access charges. Sancom does not charge their end users a "federal subscriber line charge."

Actual RICA membership has no material relevance to the substantive and legal issues resolved in the RICA Order. The RICA Order found that neither the Commission's separations process that governs how ILECs assign their costs to intrastate v. interstate jurisdictions, nor the access charge rules that govern how ILECs recover those costs apply to CLECs. This legal conclusion is not unique to RICA members, it applies to all CLECs including Sancom.

¹³ Sancom filed a tariff with the state commission setting forth the rates, terms and conditions of service. The state commission does not regulate the service or rates. The exchange served is located entirely within the state, i.e. there is no interstate exchange service such as described in Section 221 (b).

¹⁴ The Universal Service Order states "Carriers other than ILECs do not participate in the formal separations process that our rules mandate for ILECs and hence do not charge SLC nor distinguish between the interstate and intrastate portion of their charges and costs." *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776 (1997) at para. 366. ("Universal Service Order").

Therefore, membership in RICA should not be a determinative requirement for Sancom to gain the relief granted in the RICA Order. What is determinative in the RICA Order is that the same requirements should apply equally to all similarly situated CLECs, which is that a CLEC made the interstate allocation on its 499-A as required by USAC, then paid them under protest and last filed a 499-A revision within the timeframe set in the RICA Order.¹⁵ Sancom as stated above complied with all of these steps just like RICA members and therefore should be granted the same relief.

III CONCLUSION

For the foregoing reasons, Sancom respectfully requests that the Commission issue Sancom a limited waiver and require USAC to accept Sancom's revised 2011 Form 499-A. RICA membership should not be a requirement for other CLECs that are identically situated and therefore entitled substantively and legally to the same relief granted to the RICA members in the RICA Order.

Respectfully submitted,



Ryan Thompson
General Manager
Sancom, Inc.
308 S. Dumont Ave.
Woonsocket, SD 57385

¹⁵

Id



By Certified Mail

Administrator's Decision Letter

Ryan D Thompson
General Manager/CEO
Sancom, Inc.
1801 N. Main Suite 25
Mitchell, SD 57301

September 12, 2014

Re: Sancom, Inc. (Filer ID 807865)
FCC Order 13-2254 and Revised 2011 FCC Forms 499-A submitted on
January 22, 2014

Dear Mr. Thompson:

The Universal Service Administrative Company (USAC) has completed its evaluation of Sancom, Inc. (Filer ID 807865) (Sancom) revised 2011 FCC Forms 499-A (Revised Forms), which Sancom submitted to USAC on January 22, 2014 in response to the Federal Communications Commission's (FCC or Commission) *RICA/Blackfoot Order (Order)*.¹ As discussed in more detail below, based on USAC's review of the *Order*, as well as Sancom's Revised Forms, USAC has determined that Sancom does not qualify for the relief provided in the *Order* and thus rejected Sancom's Revised Forms. As a result, no credits will be issued to Sancom pursuant to the *Order*.

On November 25, 2013, the Commission released the *Order*, which addressed, among other things, a petition for declaratory ruling filed by the Rural Independent Competitive Alliance (RICA).² At issue in the petition was whether competitive local exchange carriers (CLECs) are required to allocate to the interstate jurisdiction a portion of their fixed local service revenue for federal Universal Service Fund (USF) contribution purposes.³ Specifically, in its petition for declaratory ruling, RICA asked the Commission to clarify that CLECs are under

¹ See generally *In the Matter of Universal Service Contribution Methodology Petition for Declaratory Ruling by the Rural Independent Competitive Alliance Request for Review of a Decision of the Universal Service Administrative Company by Blackfoot Communications, Inc.*, WC Docket No. 06-122, Declaratory Ruling and Order, DA 13-2254, 28 FCC Red 16037 (2013) (*RICA/Blackfoot Order*).

² See *id.* The *RICA/Blackfoot Order* also addressed a request for review filed by Blackfoot Communications, Inc. (BCI) of a decision by USAC to reclassify as interstate revenue a portion of the fixed local service revenues reported by BCI on its 2010 FCC Form 499-A. *Id.* at ¶ 1.

³ *Id.*

no binding legal obligation to report on their FCC Forms 499-A any portion of their end-user revenues that are not received by them pursuant to rates explicitly designated as charges for the provision of interstate service.⁴

The Commission agreed with RICA, clarifying that “[a]lthough CLECs must report their end-user interstate revenues on the FCC Forms 499, no Commission rule or order requires [CLECs] to identify and recover from their end-user customers a SLC or equivalent charge for the non-traffic-sensitive costs of providing interstate or interstate exchange access service.”⁵ Rather, the Commission noted that “under existing rules and requirements, CLECs are free to recover those interstate costs from their interexchange carriers in whatever manner they deem appropriate,” within the limitations of the FCC’s rules.⁶ The Commission further held that:

To the extent that CLECs choose to recover a non-traffic-sensitive charge for the costs of providing interstate or interstate exchange access service from their end-user customers rather than from access charges to interexchange carriers, they must allocate and report those revenues as interstate end-user revenues, for USF contribution reporting purposes, in a manner that is consistent with their supporting books of accounts and records, or the Commission’s good faith estimate requirement.”⁷

Accordingly, the Commission granted RICA’s request, allowing those “RICA members who filed amended FCC Forms 499 under protest, based on USAC’s directive to identify an interstate portion of fixed local exchange services, a period of 60 days within which to revise their filings and provide any relevant documentation in support of such filings.”⁸ The FCC also directed USAC to refund any resulting overpayments to these parties based on its review of those revised filings and supporting documentation consistent with the Commission’s findings.⁹ Finally, the Commission found good cause to waive the one-year filing deadline for this group of contributors “to enable USAC’s processing of any such revised filings,”¹⁰ but cautioned contributors “that the relief provided in the *Order* does not permit them to modify retroactively how they have recorded revenues in their general ledger for past periods.”¹¹

On January 22, 2014, Sancom submitted the Revised Forms in response to the *Order*. Although Sancom submitted the Revised Forms within the required 60-day period provided in the *Order*, Sancom failed to demonstrate that: (1) it was a RICA member during calendar years 2010. Moreover, based on a review of a list of RICA members

⁴ *Id.*

⁵ *Id.* at ¶ 12.

⁶ *Id.*

⁷ *Id.* at ¶ 13.

⁸ *Id.* at ¶ 14.

⁹ *Id.*

¹⁰ *Id.* at ¶ 1

¹¹ *Id.*

for calendar years 2010 through 2012 that USAC requested from RICA following the release of the *Order*, USAC was able to verify that Sancom was indeed not a RICA member during those years. Sancom also did not supply its books of accounts and records to USAC to demonstrate its revenue allocations. As a result, USAC determined that Sancom does not qualify for the relief provided in the *Order*.

FCC regulations require that telecommunications carriers file an annual FCC Form 499-A. In addition, carriers are required to file quarterly FCC Forms 499-Q, unless they meet the *de minimis* exemption.¹² USAC relies on projected revenue for the upcoming quarter as reported on the FCC Form 499-Q to bill each carrier its federal Universal Service contribution obligations.¹³ USAC relies on the annual FCC Form 499-A to reconcile billings for the previous year, as projected on the FCC Forms 499-Q.¹⁴

The FCC has stated that timely filing of the FCC Form 499 is an essential administrative requirement that serves the public interest and is a requirement on which the FCC relies in order to determine the quarterly Universal Service contribution factor.¹⁵ The FCC established a 45-day revision window to give contributors an opportunity to revise their quarterly forms while adequately maintaining appropriate Universal Service funding in a given quarter. The FCC also established a twelve-month revision window to permit contributors to revise FCC Form 499-A filings.¹⁶ The FCC Form 499-A revisions are due on March 31 of the calendar year following the original April 1 deadline.¹⁷ However, an FCC Form 499-A revision is always required if the revision results in an increased

¹² See 47 C.F.R. § 54.706(a) ("Entities that provide interstate telecommunications to the public, or to such classes of users as to be effectively available to the public, for a fee will be considered telecommunications carriers providing interstate telecommunications services and must contribute to the universal service support mechanisms."). See also 47 C.F.R. § 54.711(a) ("The Telecommunications Reporting Worksheet sets forth information that the contributor must submit to the Administrator on a quarterly and annual basis."); 47 C.F.R. § 54.708 (providing that "[i]f a contributor's contribution to universal service in any given year is less than \$10,000 that contributor will not be required to submit a contribution or Telecommunications Reporting Worksheet for that year unless it is required to do so by our rules governing Telecommunications Relay Service, numbering administration, or shared costs of local number portability.") (internal citations omitted). We note that regulations governing the Telecommunications Relay Service require all interstate telecommunications service providers to file at least an annual Telecommunications Reporting Worksheet (FCC Form 499-A). 47 C.F.R. § 64.604(c)(5)(iii)(A-B). Regulations governing local number portability and number administration require all telecommunications carriers providing service in the United States to complete an FCC Form 499-A. 47 C.F.R. §§ 52.32(b) and 52.17(b).

¹³ See generally 47 C.F.R. Part 54.

¹⁴ *Id.*

¹⁵ *In the Matter of Request for Review by Atlantic Digital, Inc. of Decision of Universal Service Administrator*, CC Docket No. 96-45, Order, DA 05-520, 20 FCC Rcd 4224, 4225-26, ¶¶ 3, 5 (2005).

¹⁶ *Federal-State Joint Board on Universal Service, 1998 Biennial Regulatory Review -- Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, Changes to the Board of Directors of the National Exchange Carrier Associations, Inc.*, CC Docket No. 96-45, Order, DA 04-3669, 20 FCC Rcd 1012, 1016, ¶ 10 (2004) (*Revision Deadline Order*).

¹⁷ *Id.*

Ryan D Thompson
Sancom, Inc.
September 12, 2014
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contribution obligation (i.e., the carrier's previously filed FCC Form 499-A resulted in the carrier having a Universal Service contribution obligation less than what the carrier owes based on information then or currently available to the carrier).¹⁸ In all cases, it is the carrier's obligation to ensure filings are made in a timely and accurate manner.

The 2011 FCC Form 499-A was due on April 1, 2011. USAC records indicate that Sancom timely filed its original 2011 FCC Forms 499-A on March 22nd, 2011. As discussed above, USAC records also indicate that Sancom submitted Revised Forms to USAC on January 22, 2014, which would result in a downward revision. Because Sancom submitted its Revised Forms well after the twelve-month revision window and because Sancom does not qualify for the relief provided in the *Order* as previously stated, USAC hereby must reject Sancom's Revised Forms, and no credits will be issued to Sancom pursuant to the *Order*.

If you wish to appeal this decision, you may file an appeal pursuant to the requirements of 47 C.F.R. Part 54, Subpart I. Detailed instructions for filing appeals are available at: <http://www.usac.org/cont/about/program-integrity/appeals.aspx>

Sincerely,

USAC

cc: Cheryl Collins, FCC Office Managing Director
Terry Cavanaugh, FCC Enforcement Bureau
Pamela Kane, FCC Enforcement Bureau William
Kehoe, FCC Enforcement Bureau
Vickie Robinson, FCC Wireline Competition Bureau
Chin Yoo, FCC Wireline Competition Bureau
Erica Myers, FCC Wireline Competition Bureau

¹⁸ *Id.* at ¶ 1.